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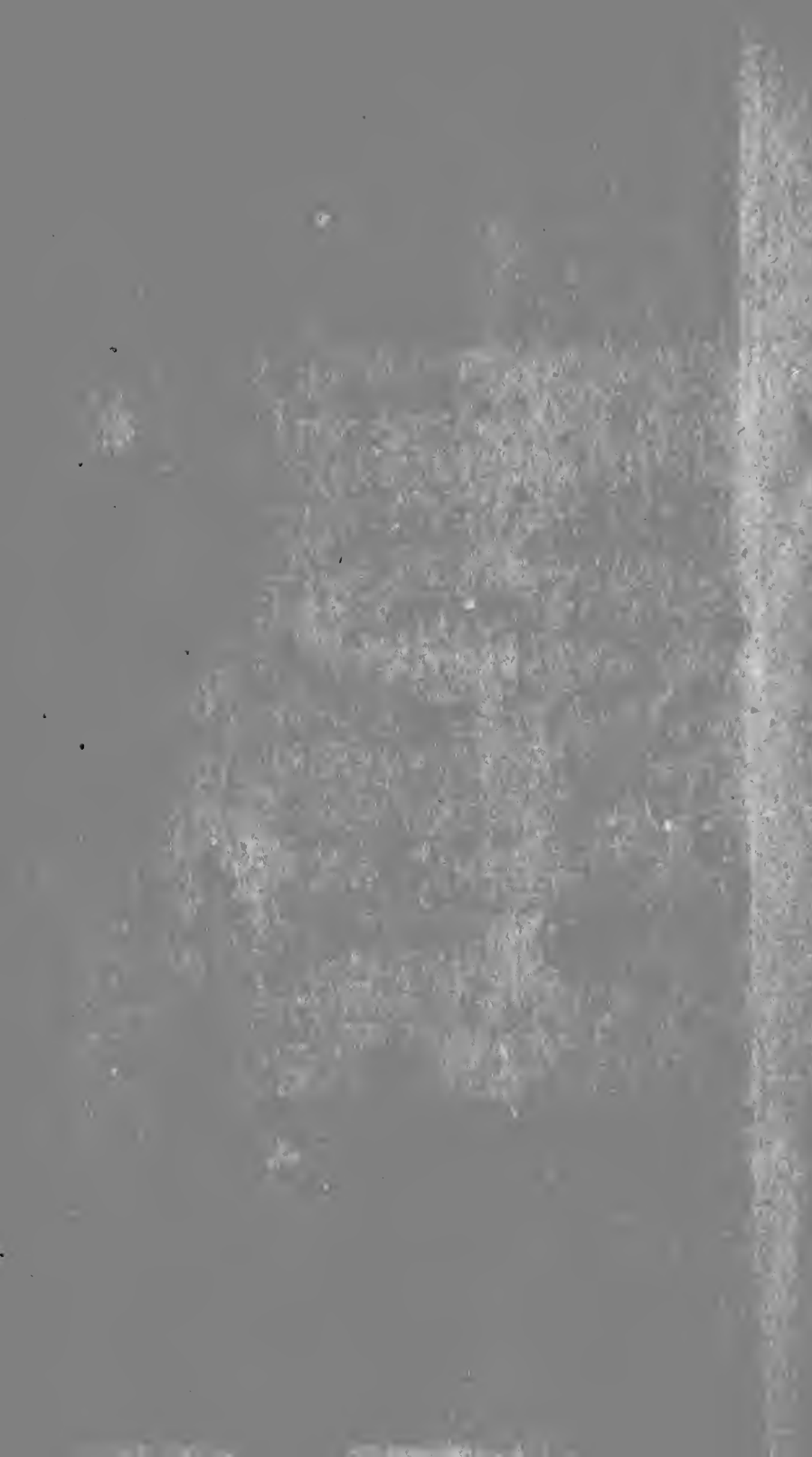
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R E M A R K S
CONCERNING THE
ENCROACHMENTS
ON THE
RIVER THAMES
NEAR
D U R H A M - Y A R D.

A D D R E S S E D

To the Right Honourable the LORD MAYOR,
the Worshipful the ALDERMEN, and the
COMMON-COUNCIL of the City of London.

I N T W O P A R T S.

L O N D O N :

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*^x ADAMS 22310

TO THE
Right Honourable the LORD MAYOR,
THE
Worshipful the ALDERMEN,
AND THE
COMMON-COUNCIL of the City of London.

MY LORD, AND GENTLEMEN,

BEFORE the Legislature had entirely assented to the late Bill in favour of the Encroachments near Durham-Yard, the two following little Tracts, were drawn up with a view to prevent the Confirmation of that Injustice; but as they were not finished time enough to be Communicated, with any hope of Success, to those Per-

sons for whose perusal they were at first intended, I think it my Duty, in the next Place, to address them to you, as they particularly relate to the Rights and Property of the City of London.—When *Property* is taken away from the Ancient and Legal *Proprietors* WITHOUT THEIR CONSENT, and vested in other Persons, *even private individuals*, as their *own Property*, for their *own private* advantage, by Parliamentary Authority, such a Precedent will render the *Property* of all Men as precarious as their *Party interest*, and will enlarge the dangerous System of Public Corruption, by increasing the means of its baneful influence.—But this is not merely, a Political evil ; it is also *immoral and irreligious*, in every point of view. To remove the Ancient Land Mark, or Boundary, is an *accursed Crime* according to the Laws of God; (compare Deut. xix. 14. xxvii. 17. Job xxiv. 2. Proverbs xxii. 28.) so that *every kind of wilful Encroachment* upon the *Property* of others, is, in some degree, tainted with this heinous Guilt,

Times

Times are bad enough, when such invasions 'on Public or Private Property *remain unpunished*; but the *moral State* of any Nation is even deplorable, and their measure of iniquity may be said to be almost filled up, when such notorious Acts of Injustice meet with *Public Encouragement*, instead of *reprehension*; and when Trespassers are *rewarded* and *gratified* (to the Exclusion of the injured Proprietor) with a *Parliamentary Right* even in the very Object, which tempted them to break the Laws and *wrong* their Neighbours.

Many well meaning People do not seem to be aware of the bad tendency of this example; and there is, therefore, the more necessity that it should be pointed out and exposed.

The injustice appeared to me so notorious, after I had carefully considered the case, that I should have been *inclined*, as *a Citizen of the World*, to represent the monstrous *immorality* of *rewarding*, instead of *Punishing*, *Trespassers*, (lest the evil example
should

should become epidemical and contagious in *the World*, which is already too corrupt) but *as a Citizen of London* it is even *my Duty* to do so in the present case : for when I took the Oath of Allegiance to the King, I was Sworn at the same time to “ *maintain the Franchises and Customs,*” of the City of London to the utmost of my power (see the Oath of every Freeman *) and therefore, as I hope I shall ever be faithful to the City of London, as well as true to our most gracious Sovereign, I esteem it my indispensable Duty *to both*, for the sake of *public Justice*, to point out the *illegality* (as it appears to me) and dangerous tendency of *Publicly rewarding the Trespassers on the Rights of this Great City* with an *exclusive Title* to the very object of their temptation to Trespass.

* “ You shall swear, that ye shall be good and true to our Sovereign Lord King George, obeyant and obedient ye shall be to the Mayor and Ministers of this City. *The Franchises and Customs thereof ye shall maintain, and this City keep harmless in that that in you is, &c.*”

The *manner* of making these Encroachments (viz. by throwing Rubbish into the Water without any Fence to retain it) has been as hurtful to the River as the Encroachments themselves, without affording the least probability of any one good effect, saving, or convenience whatsoever, to recommend it: *a method* unfavourable to every purpose, except the clandestine Designs of Trespassers, that the intended Projection of their Encroachments may not surprize and alarm the Public before the Mischief is carried into Execution: as for instance;—if the space, which has lately been, thus gradually, stolen from the River near Durham Yard, had been previously marked off with Piles for the Boundaries of a Wharf, or with a Bank of large Chalk-Stones, or other hard Materials, not liable to be washed away, (as all Embankments on Navigable Rivers ought to be made) the Trespass would have appeared much more enormous at first than by this method, which rendered the

Pro-

Progress of the growing Encroachments less notorious and alarming.

Since these late Trespasses began, the Bed of the River (as I have been informed by several Watermen and others, who have been well acquainted with the River for many Years) is considerably increased in Height, which is certainly occasioned, in great measure, by the *manner of Embanking* above described.

But, I am sorry, my Lord and Gentlemen, to observe, that the City is as much to blame on this Account as the Encroachers; for my fellow Citizens, or some of them, have suffered themselves to be persuaded, that this is the most eligible way of Embanking; and they have, therefore, *adopted*, or, at least, *do allow* the practice of this pernicious and *slovenly* Method, in those Parts, where the Embankment is authorized; so that the City seems to betray her own Cause, as if she really intended, by setting this *bad Example*, to justify the like notorious Abuse near Durham-Yard; and, thereby, render the Progress and Iniquity of that growing Encroachment less conspicu-

ous and remarkable. It behoves the City to enquire how such an inconsistency began: for this *rude, slovenly and unmechanical Measure* could not have been adopted for the sake of saving *either Time or Expence* in the Work; because it, certainly, requires a much greater Quantity of Rubbish than would have been really necessary to fill up the Space intended to be embanked! And this to the manifest Detriment of the River! for the lighter Particles of the Rubbish are constantly washed away from the Banks, every Tide, both up and down the Stream; and must inevitably lodge at the Bottom of the River; because the Current runs, alternately, both Ways. And, for the same Reason, the boasted Scheme of *contracting the Avenue of the River* will not (it is manifest) prevent the gradual filling up of the Bed, because the Rubbish and Filth, that is washed away from the Banks at one Time of Tide, is liable to be brought back again at another; and so to be shifted, backwards and forwards, till the whole is gradually incorporated in a thick

heavy Loam at the Bottom of the River; which, at length, becomes too firm to be affected or removed by the Current; and by this means the Bed will, probably, be so raised, in process of time, as to render the River totally unfit for Navigation.

It is therefore, absolutely necessary (my Lord and Gentlemen) to put a Stop, as soon as possible, to this scandalous Practice (viz. of throwing Rubbish into the River without a Fence to retain it) whether the Embankments are allowed to Proceed or not: but it is, certainly, more for the Interest of the City to *cut new Docks and Reccesses* from the River, and to *clear and deepen* the old ones, than to *Embank*.

There are likewise some other Abuses to which the alarming Increase of the River's Bed is, likewise, in some Degree, to be attributed: for besides many other lesser Encroachments that are continually making on both Sides the River, by enlarging the Banks with Rubbish, driving Piles, &c. I am informed, that Rubbish from Buildings, Re-
fuse

fufe from the Dye-houfes, &c. have fometimes been thrown out of Lighters into the River in the Night, in order to fave the trouble and expence of carrying the load farther away.—I have been told this by feveral perfons who have accidentally feen the like Trefpaffes.—It is therefore become neceffary, for the future Prefervation of this Noble River, that the City fhould offer a proper Reward to all Watermen and others, that fhall give the firft Information at Guildhall, or the Mansion-Houfe, of any fuch Encroachments or Mifdemeanors in future. The Reward fhould be paid when the Offender is convicted; and might, perhaps, be defrayed out of the Fine for the Offence. And the Water-Bailiffs fhould, likewise, be rewarded in the fame manner, whenever they fhall have been vigilant enough to give the firft Notice of any Mifdemeanor. A proper Inqueft of Citizens fhould be appointed out of each Ward by Rotation, or, elfe, be impaneled by the Sheriffs as a Jury (from time to time as there fhould be occafion) to examine the

Com-

Complaints, as soon as any Informations are received. And the Assent or Leave of such an Inquest to any Encroachment, driving of Piles, &c. should not be allowed to authorize the same, or put a stop to further Enquiry, lest they should be in any Degree influenced by private Solicitation, or be otherwise tampered with ; (which has sometimes been the Case on public Inquiries when Nuisances have been presented) but the final Determination should rest, as at present, with the Court of Common Council ; and no Water-Bailiff, or other City Officer whatever, should have Power to excuse, or tolerate, the driving any Piles, or the least Encroachment. For when such a Power is vested in any *Officer*, whose charge is of this nature, it is apt to destroy the intended utility of his *Office* ; because the more Offences and Encroachments are committed, the more Fees and Christmas Compliments he will, probably, receive, and annually demand, as the Price of Toleration and Forbearance. The Office of Water Bailiff (though it affords an ample

Proof

Proof of the ancient Jurisdiction and Right of the City of London to the River Thames, yet) has been hitherto, in general, (I fear,) rather a means of authorizing Encroachments, than of preventing them.

I do not mean to blame the Conduct of your Water Bailiff, or of any other Officer in particular; for Custom has so reconciled the giving of pecuniary Acknowledgments to the Water Bailiff for tolerating Encroachments (as I have been informed), that the same are looked upon as the *lawful* and *just Dues* of his Office: and he does not clandestinely demand them, but openly, and, as it were, by the authority of the City; which receives of every such Officer, at his appointment, a very large sum of Money, for the Purchase of his Office, *in Consideration of these Emoluments*.—I say—“*in Consideration of these* “ *Emoluments*,” because the same must necessarily *be supposed* to be known and understood by *the Sellers* as well as *the Buyers*, at the Time of the Purchase, if the *proper* Income and Value of the Office be compared with

with the enormous Price that has, of late, been given for it. The *Profits* or *Salary* ought, therefore, to be made adequate in some other way, otherwise *the City* and not *the Water-Bailiff* must be blamed.

I ought not, however, to blame *the City* without endeavouring, at the same time, to obviate the Objection which some Persons have lately urged against her on the same Account, viz. “ that by neglecting to prevent Abuses and Encroachments, she has forfeited her *Right* of Conservancy :” but as I have already shewn, in the two little Tracts, sent herewith, that the City has *a natural*, as well as *Legal Right* to her Jurisdiction on the River, I need only add, further, that *the like Plea* of Forfeiture, if it were once admitted, would be equally effectual to deprive any Lord or Gentleman of his *Family Estate and Patrimony*; for there are but few Men, I fear who make so good a Use of their Possessions as they might, and ought; though there are very many, that would PRETEND *to improve*
ana

and dispose of the same more advantageously for the PUBLIC GOOD, if such a Plea was sufficient to justify an Attempt to dispossess the right Owner. But to return—I do not mean to blame the City for selling the Office of Water Bailiff; but, rather, for not publishing (before it is offered to sale) proper Conditions, Instructions, and Injunctions, to point out the Duties of the Office; and for not giving notice that the same is liable to the Penalty of Forfeiture for Mal-administration; in order that the Purchaser may, thereby, be enabled to regulate his Conduct agreeable to the real Duty of his Office; and may know, that he forfeits his Place, if he, wilfully, tolerates the least Encroachment. Were this Method observed, the selling of Places (I mean Places merely of Trust, that don't require great Learning and Science) would be, by far, the most eligible way of disposal; because Recommendations and great Interest are far from being certain Proofs of the most deserving Candidate; whereas the Purchase Money would be a certain and real Gain, as well as an
 excellent

excellent *Security* for good Behaviour. But without such Instructions and Conditions the *private Emolument* of the *Officer* is too liable to interfere with the *public Utility* of the *Office* : whereas, by the Method which I have already submitted to your Consideration (*viz. of offering Rewards for the first Discovery of Offences,*) every Waterman would find it his Interest to take upon himself the Office of a *diligent and inexorable Water-Bailiff*, because the proposed Reward arises from the *public Proof*, instead of the *Concealment and Toleration* of Offences ; and there would be too many of these *voluntary Officers* to be bribed to secrecy.

I am, with great Respect,

My Lord and Gentlemen,

Your most obedient,

And most humble Servant,

Old Jewry,
10 Aug. 1771.

GRANVILLE SHARP.

R E-

R E M A R K S

CONCERNING THE

E N C R O A C H M E N T S

O N T H E

R I V E R T H A M E S

N E A R

D U R H A M - Y A R D .

P A R T I .

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СВЯТЫЙ АНДРЕЙ

ПЕРВОУЧИНОВ

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P A R T I.

Some Remarks on the Case of the City of London with respect to the Encroachments on the River Thames near Durham-Yard, and the Bill now depending in Parliament to establish the said Trespasses.

IT cannot be denied, notwithstanding all the delusive Sophistry that hath been used upon this occasion, that the City of London hath ever enjoyed and exercised on the River Thames a Right of *Conservancy*, as well of the *Width* or *Avenue*, (by occasionally inspecting and regulating the Boundaries) *as of the*

Fishery, with power and authority to remove all nuisances; so that this Franchise, or Liberty, is absolutely vested in the City by *Prescription and Ancient Usage*, besides many positive *Grants and Confirmations*;—And what Freeholder will be able to produce a more authentic Title to his Estate and Property! For a long process of time, and a long Use, Possession, or Custom, which exceeds the Memory of Man, *is sufficient to constitute a Right*, or just Title. “Longum Tempus et longus
 “Ufus, qui excedit memoriam homi-
 “num, *sufficit pro jure.*” Principia Legis et Æquitatis, p. 55. See also Co. Lit. 115. There is, besides, an express Article in Magna Charta to secure to the City of London *all her Ancient Liberties and Customs* (“Civitas Londini habeat
 “omnes libertates suas antiquas et
 “con-

“*consuetudines suas.*” (Cap. 9.) amongst which, undoubtedly, this Right and Custom of *Conservancy* is to be reckoned as one of the *most material Franchises*, because the *very existence* of this great Trading City depends upon it; so that the City’s Title to the *Conservancy* is founded on *a natural* as well as *legal Right*.

The pretended consent of the Collegiate Church of Westminster cannot palliate the Trespass, or lessen the injury to the City of London. The Grant of King James, on which the Claim of that Church is said to be founded, could not convey *a power to embank and fill up the River*, nor a *Right to confirm such a Trespass* when committed, because the King himself had *no such power*, and consequently
 had

had *no right to Grant it* ; so that the Jurisdiction said to extend “ *infra finem* “ *aquæ to the middle of the Stream,*” must be construed in some other sense, or it will, otherwise, render the *whole Grant null and void* ; because the River Thames is a *Public Avenue or Passage* to the City ; so that, in this respect, it is to be considered as the *King’s highway*, and it is esteemed the King’s highway no otherwise than in Trust for the Public : so that the King has no power to dispense with an *Encroachment on the highway* ; for though “ *he may pardon Nuisances that are transient and* “ *not continuing,*”—Yet “ *a Nuisance* “ *in the highway, which still continues,* “ *and is not ended, until removed; cannot be pardoned;*” (Judge Vaughan’s Reports, 333.) because *the same is to be esteemed evil and iniquitous, in its very*
nature,

nature, a “*Malum in se, Bad in itself,*” which is further proved by the same Learned Author in P. 337. “I may conclude (says he) those things to be *mala in se, which can never be made lawful.*” He then cites the Year-Book of 11 Henry 7. viz. “But *Malum in se,* the King nor any other can dispense.” And instanceth, “Si come, Si le Roy, voyloit pardon de occider un homme, *ou de faire nuisance in le haut chemin, ceo est void,** —and upon the same reason (says he) a license to imprison a Man, *to take his Land, his Horse, or any thing*

* To wit, if the King, should be willing to pardon the Killing of a Man, (or rather, as the next sentence explains it) “*will GIVE POWER to kill a Man,*” or to make “a Nuisance in the High-Road, the same is void.”

“*that*

“ *that is his from him, is void. For in*
 “ *Life, Liberty, and Estate, every Man,*
 “ *who hath not forfeited them, hath a*
 “ *Property and Right which the Law*
 “ *allows him to defend; and if it is*
 “ *violated, it gives an Action to re-*
 “ *dress the Wrong, and to Punish the*
 “ *Wrong-doer—Therefore a Dispen-*
 “ *sation, that is, to make lawful the*
 “ *taking from a Man any thing which*
 “ *he may lawfully defend from being*
 “ *taken, or lawfully punish if it be,*
 “ *must be void. For it is a contradic-*
 “ *tion to make it lawful, to take what*
 “ *may be lawfully hindered from be-*
 “ *ing taken, or lawfully Punished if it*
 “ *be. And that were to make two*
 “ *Men have several Plenary Rights in*
 “ *the same thing at the same time, which*
 “ *NO LAW CAN EFFECT: Therefore*
 “ *TO DO a thing which NO LAW can*
 “ *make*

“ *make* LAWFUL, *must be*—MALUM
 “ IN SE.”

This Argument clearly proves the Impropriety of pretending a Right or Power in the Crown, or in the Church of Westminster, to give their consent for the establishment of the Trespas in the River at Durham-Yard.

The Right of Conservancy has been invested in the City of London from the most ancient Times, so that the King cannot resume that Power if *he would*; for it is a maxim in Law, that a *quiet and uninterrupted Possession* for 60 Years creates a just Title. “ *Possessio*
 “ *pacifica pour Anns 60 facit Jus:*” (See Judge Jenkins to the same effect Cent. 26.) and, the Kings Order, Command, or Letters Patent have

no legal Weight, or Effect against such a Right, for “*rescriptum principis contra jus non valet.*” On the other hand, the Right of the Church of Westminster to the River (even supposing that it had been lawful for King James the first to grant such a Right) is nevertheless forfeited for want of being claimed and put in use since that time; whereas the Right of the Citizens of London is sufficiently established (according to the Maxims before cited) by the exercise and enjoyment of a continual and undisputed Jurisdiction upon the River, as being their undoubted Right and Property, *surely* for more than 60 Years last past.

—*And a Right or Property, thus acquired, is as valid, even against the Pretensions of the Crown, as against those of the Church of Westminster, or, even, as*
against

against those of a Private Man,—for the *Nullum Tempus* Doctrine cannot justify the King's Claim to the *Soil* of the Thames, because the Right of the Crown in Manors, Lands, Tenements, &c. is exactly upon the same footing *with respect* TO TIME *as Private Freeholds*; For Bracton informs us that in all such things—“*currit tempus contra Regem, sicut contra quamlibet privatam personam.*” (Bracton de legibus et consuetudinibus Angliæ, 2d B. c. 5. P. 14.) I have thoroughly examined the Doctrine of “*Nullum Tempus occurrit regi,*” in a little Tract expressly upon that Subject, and therefore need not enlarge upon it here.

Now as the City of London has acquired so firm a Title to her Jurisdiction by a quiet Possession for 60 Years, ac-

according to the Maxim before quoted, how unjust is it, at this time, to call her Right in Question, when it is *notorious*, that the same may as easily be traced back more than 10* times 60 Years! For *ex diuturnitate temporis omnia præsumuntur Solenniter esse acta.*

* See the Charter of Richard 1st, C. 2d. cited in the Royal Charter of Confirmation by Charles the 2d, to the City of London, p. 9. “ We
 “ have clearly quit claimed all that which the
 “ Keepers of the Tower of London were wont
 “ Yearly to receive of the said Wares.”—Speaking of Wares in the Thames to the Detriment of the City; and this Charter is expressly said to have been given “ for the Soul’s Health of King
 “ Henry our Father, and all our Ancestors
 “ Souls,” probably meaning his Ancestors of the Norman Line, who had unjustly usurped those Rights. The Jurisdiction of the City of London upon the River was soon after acknowledged also by his Brother King John. See his Charter cited in the Posthumous Works of Sir H. Spelman,

We are taught also by the *unquestionable* * *Maxims* of the Common Law that Men cannot be obliged to part with their *Right and Property* without their own free consent : “ *Iniquum est*
 “ *ingenuis hominibus non esse Liberam re-*
 “ *rum suarum alienationem;*” — And
 “ *Rerum suarum quilibet est moderator et*
 “ *arbiter.*” — And again, “ *Regulariter*
 “ *non valet pactum de re mea non alie-*

man, p. 63. “ *Et Civitas Londinensis habeat*
 “ *omnes ANTIQUAS libertates et liberas consuetudines*
 “ *suas tam per Terras quam PER AQUAS.*”

N. B. Even at that time they were esteemed,
 “ *ANTIQUAS Libertates, &c.*

* Whosoever denies the force and weight of the *Maxims and Principles* of the Common Law, is unworthy of Argument, and deserves not to be treated as a reasonable Being; for “ *Con-*
 “ *tra Negantem principia non est disputandum.*”
 Co. Lit. 343.

“ *nanda*”

“ *nanda* ” (Co. Lit. 223.) For no Man may be compelled to sell what is his own, even for the full value of it. “ *Nemo cogitur rem suam vendere, etiam justo pretio.* ” 4 Inst. 275.— And again, That which is *my own*, cannot be taken from me *without my consent* ; “ *Quod meum est, a me, sine me, auferri non potest.* ” Jenk. Cent. 251.

There is, indeed, an Exception to these general Maxims, and that is, when the *Public Benefit* requires such an Alienation, as for the making of Public Roads, Canals, * &c. or Build-

* In all the Cases here mentioned it is necessary that the *Alienated Private Property* should be vested in the *Public*, or in the *Crown for the Public*, and not as the *private Property of any Individuals whatsoever*, notwithstanding that the *Public* may seem to be benefited by their *Private Undertakings*

ing Fortifications for the Public safety: In all such cases, *Private Advantage* must give way to the *Public Good*, “*Privatum commodum Publico cedit*,” and “*Privatum incommodum Publico Bono pensatur*.” (Jenk. Cent. 223 & 85.) But when the *Public Property*, vested in a Body Corporate in Trust for the *Public Advantage*, is clandestinely taken away BY ENCROACHMENT, and an at-

ings. Precedents of this kind have, indeed, been established by *some late Acts for Cutting Canals*; but I flatter myself, that the Legislature was not then aware of the impropriety of such examples. The Proposal of the City of London, for Cutting a Canal from Isleworth upwards, was a proper pattern for all other Undertakings of that nature; because the Property was to be vested in the *Public*, and it was intended finally to be made a *Free Navigation*, so that, of course, it would have been considered, in Law, as the *King's Highway*.

tempt

tempt is made to *establish the Trespass*, and vest that *Public Property in Private Hands*, for *Private Advantage*, without the *Consent of the Ancient and Legal Trustees*, it is to reverse the very fundamental Principles of *Natural Equity*, and to turn the once firm Pyramid of the Law upon its Point, instead of its *Basis*, so as to threaten ruin and destruction to all things within the reach of its fall.—*The Pretence*, that the *Public* will be *benefited* in proportion to the advantage arising to the *Trespassers*, is frivolous, and ought not, by any means, to be admitted. It favours of *partiality*, to view a *Public Benefit*, through the medium of a *private Advantage*, because the public *Utility*, (usually alledged in such cases) proves, 9 times in 10, a mere pretence; and nothing illegal ought to be admitted, even though

though *the pretence* for it is Lawful ;
 “ *Pretextu liciti non debet admitti illi-*
 “ *citum.*” (10. Co. 88.)—There are
 also some other things alledged as rea-
 sons for shewing favour to this Tres-
 pass, viz. the Taste and Skill of the
 Architects, and the Public Ornament
 of their Edifices, &c. But all such
Pretences are equally frivolous with
 the first, when they interfere with
Public Right and Franchise, for the
 Law does not favour the Elegant and
 Sumptuous ; “ *Lex non favet delicato-*
 “ *rum votis.*” (9 Co. 58.)

Yet the City paid a proper Atten-
 tion (it is manifest) to the merit of
 the Architects, and the Appearance of
 their Buildings, by discovering an In-
 clination (which I have elsewhere
 mentioned more at large) to allow

D

them

them sufficient room to make a convenient Wharf, that the Purposes of their noble Vaults might not be injured; but, as more than this would be superfluous, the Citizens could not have been justified, had they not rejected the unconscionable request of the Trespassers, especially as it was thought, that the addition of a *large Timber-Yard* for the *private Use and Advantage* of the Builders, would not, (according to the Taste of the Citizens at least) contribute much *to public Ornament and Elegance*. The other *pretence* of *public Utility* was as little apparent to the Citizens in general as this last; for it is still *doubtful*, and remains to be proved; (as I have shewn in another Paper;) whereas there is NO DOUBT of the *illegality of the Trespass*; for the same was notorious, as well
with

with respect to the Encroachment itself, as the manner of making it, by throwing so many Thousand Cart-loads of Rubbish into the River, without a Fence to retain it, which must, certainly, prejudice the River by lessening the Depth.—This was an apparent *injury*, and, “ *an Injury is contrary to Law: Tort a le ley est contrary.*” (Co. Lit. 158.) No Man ought to be enriched to the inconvenience or disadvantage of another.—“ *Nemo debet locupletari ex alterius incommodo.*” Jenk. Cent. 4. No Man ought to be allowed to receive benefit or take advantage from his own fraud or Trespas. “ *Nemo ex dolo suo proprio relevetur, aut auxilium capiat.*” (Jur. Civ.) And shall the Parliament of England then endeavour to establish a *Wrong*, to the total subversion of these indis-

putable Precepts? The Example is dangerous! The Precedent threatens Ruin and Diffolution to all the legal ties of Security for the quiet Possession of Lands and Inheritances in this Kingdom.—For if we depart from the Law, there can be no Security to any Man in any thing, but all things will be rendered uncertain and precarious.

“ *Si a jure discedas vagus eris, et erunt omnia omnibus incerta.*” Co. Lit. 227.

The Public Good requires, that bad Actions should not remain unpunished.

“ *Interest Reipublicæ ne maleficia remaneant impunita.*” Jenk. Cent. p. 31.

for when a Judge (and much more the whole Legislature) favours an unworthy Man, does it not encourage all Men to fall away from their integrity? and does it not promote an universal contagion (as it were) of a *Licentiousness*?

ness? “ *Cum indulget Judex indigno,*
 “ *nonne ad Prolapsionis contagium pro-*
 “ *vocat universos.*” (Fleta. Cap. 17.
 S. 11,) Because the *Admission of one*
Absurdity, or Injustice, makes way for
 Ten Thousand more,—“ *Uno absurdo*
 “ *dato infinita sequuntur,*” 1 Co. 102.
 and those Crimes and Trespases which
 are often excused and defended, will,
 surely, be often committed. “ *Videbis*
 “ *ea sæpe committi, quæ sæpe vindican-*
 “ *tur.*” 3 Inst. Epilogue.

If all these Points are carefully con-
 sidered, the Bill must, manifestly, ap-
 pear *inconsistent with the Spirit and*
Principles of the Common Law. Nay!
 it is so notoriously unjust, that it af-
 fords us some comfort, even by the
 excess of its Illegality!

For

For I have already shewn it to be a “*malum per se*,” and contrary to *natural Right*, and therefore I trust that it will be *null and void* of itself, even if it should gain the Assent of all the Three Branches of the Legislature; for no Law can establish what Nature (or natural Right) prohibits: “*Quæ rerum natura prohibentur nulla lege confirmata sunt* :” (Finch 74.) and *whatsoever is done contrary to Law*, may be esteemed as *undone, a mere nullity*: “*Quod contra legem fit, pro infecto habetur*.” 4 Co. 31.—But, above all, let it be remembered, that the *Old Liberties and Customs of the City of London* (amongst which the Conservancy of the River Thames, Medway, and Lee, is perhaps the most essential to her Welfare and very Existence)

istence) *are secured to her by an Express Article of Magna Charta* (Chap. 9.) which I have already remarked in the beginning of this little Tract; and therefore it behoves the Learned in the Law to demonstrate, that this Bill is not *in any Point* derogatory to the said 9th Chapter of Magna Charta; but, if this cannot be done, the joint Authority of King, Lords, and Commons, is not sufficient to pass it into a Law, (*I mean, a Valid and Constitutional Law, such as can be maintained without Corruption and Arbitrary Power*) because it is “*Assented, and accorded,*” by an Act of the 42d Year of King Edward III. Chap. 1. (which is still in force, and must ever remain so,) “*that the Great Charter, and Charter*” “*of the Forrest, be holden and kept*” “*in*

“ *in all Points*, and if any Statute be
“ *made to the contrary*, that shall be
“ *holden for NONE.*

GRANVILLE SHARP.

Old Jewry,
6th May, 1771.

REMARKS

R E M A R K S

CONCERNING THE

ENCROACHMENTS

ON THE

RIVER THAMES

NEAR

DURHAM-YARD.

P A R T II.

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P A R T II.

*Some further Remarks concerning the
Injury done to the City of London by the
Encroachments on the River Thames
near Durham-Yard.*

THE extraordinary Favour shewn in Parliament to the Trespasses lately committed by several Persons, in the enormous Encroachment on the River Thames near Durham-Yard, is liable to affect the Security of Property in general; because an Encouragement to commit Trespasses, and a Precedent to establish and confirm the same, when committed, do certainly tend to the

Total Subversion of Justice; for in every point of view the same are repugnant to the fundamental Principles of Law and Equity.

Actions were commenced in the Court of King's Bench against the Encroachments, *before* the Trespassers brought their Bill into Parliament; so that the Concurrence of Parliament with the Authors of the Injury, *is a gross insult upon the Laws*, by stopping the regular Course of Justice in a *matter of Right*, which came properly before the King's Courts; for, as it is esteemed unjust to punish a Man by the force of an *ex post facto* Law, it, certainly, is equally unjust by an *ex post facto* Law to confirm, and establish a *manifest Trespass*, which was previously referred to a proper Court for Redress;

Redrefs ; and the Application to Parliament is of itself a sufficient Proof, that the Right and Claim of the City of London *are just* ; and such as must necessarily have found a *Remedy in Law*, according to the usual Proceedings of the King's Courts, otherwise the *ex post facto Law* had been needless.

It ought to be remembered, also, that the City of London, for the sake of Peace, and to avoid a Contest in Parliament, was *inclined* to allow some of the Trespassers, (who are eminent Builders) as much ground in the Front of their Buildings, as would be sufficient to make a Wharf, wide enough for Carts to come down, and to turn, and load, &c. as at other Quays in the City, so that the use and intention of the noble underground Passages might
not

not be lost, or in the least injured; and a private intimation of this Lenity and Favour, to which the City seemed disposed, was given to a Friend of the Builders, that they might be advised to Petition the City for Room to make such a Wharf; and they were told, that the same would *probably* be granted in consideration of their great Expences, and the Grandeur of their Buildings.

But instead of *such a Petition*, the Builders presented a *Memorial* (they did not deign to call it *a Petition*) desiring more than 3 or 4 Times as much room as was necessary for the said purpose; because, it seems, a Wharf alone would not content them; but, *as Builders*, they must be indulged also with room enough, out of the Width of the River, to make (likewise for *a Public Orna-*

Ornament, I suppose) even a *Timber Yard* besides!—They did not, indeed, mention *the Timber Yard* in their Memorial, but the design plainly appears by a Clause in the Bill to regulate *the Height of the Piles of Timber*, &c.

They did not fail, however, to demand of the City, as much Space as they thought necessary for *their intended Timber Yard*; and they were pleased at the same time to desire *the Concurrence of the City (as Conservators of the River) to their Petition in Parliament!* An Insult this to the Citizens of London, as gross and enormous, as the *Encroachment itself*;—for, in effect, it was to desire the Citizens to join in a Petition to Parliament *against themselves*; that is, in Favour of, and to establish and confirm a notorious Trespass committed in Defiance

fiance of their own repeated Prohibitions and Presentments.

The Memorial, however, was rejected with a proper Disdain. But this was no hindrance to the Adventurers; they were already *sufficiently aware*, that they might affront the City with Impunity. — They knew their *Party Interest* in Parliament, and *the Partiality* has, hitherto, been *proved by the Success*.

Two great Law Lords strenuously endeavoured to palliate the Offence, and to set forth the Public Utility of the Embankment: One of them admitted that,
 “ the present Scheme was intended for
 “ the private Emolument of Mess. A-
 “ dams, but then, (said he) that Emolu-
 “ ment could only increase in Proportion
 “ to the Convenience, and Public Uti-
 “ lity

“ tility of the Embankment ; if it was
 “ found inconvenient ; the intended
 “ use would be lost ; consequently
 “ their Profit would go with it ; it
 “ was, therefore, in every point, a great
 “ Public Good arising from a Private
 “ Advantage.” However plausible this
 Argument may seem, yet I must ob-
 serve, that it ill becomes any Gentle-
 man at the head of the Law, to view
a Public Good through the medium of
a Private Advantage, especially as that
private advantage had been sought by
a manifest Public Injury and Trespass ;
 for when the Encroachment first be-
 gan, the Right of the City of London
 was so far from being disputed, that
 the Trespassers themselves acknow-
 ledged it, by Petitioning for Leave ;
 and though they could not obtain
 Leave from those who had a Right to

give it, yet they continued to *enlarge* their enormous Trespafs, as confidently as if the whole River was indisputably their own. But even if the imaginary *Public Good*, (supposed by the learned Chief Justice) be admitted, yet his Lordship knows, that “ That which
 “ is otherwise Good and Just in itself,
 “ becomes Wicked and Unjust, if it
 “ is sought or obtained by Force or
 “ Fraud. *Quod alias bonum & justum*
 “ *est, si per vim vel fraudem petatur,*
malum et injustum efficitur.” (3 C. 78.)
 and his Lordship will not (I apprehend) deny, that *an enormous Trespafs* has been committed; and therefore, those that are robbed and injured ought, *before all things, to be reinstated*, and have their Rights restored. “ *Spociatus debet ante omnia restitui.*”
 2 Inst. 714. Law, Justice, and Equity,
 cannot

cannot shew the least favour or consideration for the Delinquents in such a Case, because “ *Iniquity Bars Equity*,” —and, “ no Man can take advantage “ from his own Trespafs or Injury. “ *Nullus commodum capere potest de injuria sua propria.*” Co. Lit. 148.

“ The Public Good requires that “ bad Actions should not remain unpunished. *Interest Reipublicæ ne maleficia remaneant impunita.*” Jenk. Cent. p. 31.

But if, on the contrary, the Legislature will favour and confirm an apparent Trespafs, no Man’s Property can be safe from such Adventurers. If I had *as much Party Interest*, and paid as little regard to the difference between MEUM and TUUM as they have done

in the present Case, *or their Advocates*, I would procure an elegant Plan for raising such a Building, as should not only be a Public Ornament in its structure, but a Public Convenience in its Accommodations within and without ; in short, I would build a noble Inn, open to all Men, (*for MY OWN and the public advantage*) upon the Inheritance of Lord A, Lord B, or of any other Noble Freeholder whatsoever, whose Property, in point of Situation, might seem to promise the most advantage to my undertaking.

Or a good Plan for raising an Elegant and outwardly Ornamental Edifice, inwardly adapted to the purposes of Grinding Corn, Slitting Iron, making Gunpowder, or any other Articles necessary for the sustenance,

nance, convenience, or protection of *the Public*, would equally answer my *private Advantage*: and a good *Mill* would be a good *Inheritance*, let me tell you, if I could make it *my own Freehold* wherever I pleased to Build one, *with or without* the Consent of the Lord of the Manor, or the lawful Proprietor of the Ground.

The same Doctrine may be extended even to the Building of *whole Towns upon other Mens Ground, without Leave*; because the Towns would be for the accommodation of Gentlemen, of Tradesmen, of Manufacturers, Artificers, &c. &c. &c. whereby *the Public* would manifestly be benefited as well as *the Builder*, in proportion to the Success of each Undertaking in the Increase of Inhabitants.

If

If the lawful Proprietor of the Ground, on which *I trespassed*, would be pleased to give me his Consent, it would be well ; and if he refused it, *my Pretensions would still be as good as the much favoured Cause of the Trespassers at Durham-Yard* ; for, even though I should be obliged to allow that my present Scheme “ *was intended for the* “ *Private Emolument of,*” myself—yet I could alledge the Opinion of a Chief Justice, that “ *this Emolument could* “ *only increase in proportion to the Con-* “ *venience and Public Utility of,*” my Inn, my Mill, or my Town, “ *If it* “ *was found inconvenient, the intended* “ *Use would be lost, consequently,*” my “ *Profit would go with it ; it would* “ *therefore*” (according to this Opinion of my Lord Chief Justice) “ *be in* “ *every*

“ *every point a great PUBLIC GOOD, arising from a PRIVATE ADVANTAGE.*

I might alledge, also, that this *private Advantage* of mine, ought to be much more favoured than that of the Encroachers on the River Thames, because, if I should raise my Prices for Provisions, for Grinding, for Rent, &c. upon the Public, there would still be Room sufficient in the Neighbourhood, (*as the Consent of Proprietors is at present esteemed unnecessary*) for other People, also, to *Trespass* and Build more Inns, more Mills, or more Towns *for THEIR OWN and the Public Advantage*, as near to my advantageous Situation as they should think proper; so that the Public, when *imposed upon by me*, might be enabled to give the preference to cheaper and less unconscionable Trespassers.

But

But in the other Case, the local Advantages are more limited and confined to a particular Situation ; and the *Encroachments are already so great*, that there is scarcely Room for more within any advantageous Distance ; because the Advantage of Situation *for Wharfs* is confined within the extent of the Trading Part of the Town, now fully occupied ; *and the Port or Bason of the River*, within these Bounds, is already too much contracted to admit of *more Encroachments*, without encumbering or stopping up *the Passage of the River* with Craft and Vessels, which even at present are greatly endangered for want of commodious and proper Mooring-Places out of the Stream and Tide-way.—During the Frosty Weather this last Winter, 3 or 4 Ships were wrecked, and many others damaged,

even

even in the Port of London, for want of such proper Accommodations ; and a very considerable number of Barges, Lighters, &c. were forced away from their Moorings by the Ice, and lost, both above and below London Bridge ; so that it is manifest, that *Water-room* is of much more consequence to the Port of London than any Land gained from it can possibly be ; and that there cannot, therefore, be any Room to spare, for making more Wharfs out of the Bed of the River, without *an apparent Injury to the Harbour* ; so that if the new Wharfs should become absolutely necessary by an Increase of Trade, *the Public Utility* must submit to the Exactions of the *Private Possessor*, whose Tenure is founded in *Public Injury and Injustice* ; and the Trade of this great City, on which its very

Existence depends, must be Loaded and Clogged with the much favoured Private Advantage of each Trespasser; so that we may fairly measure, by the Enormity of the present Encroachments, how conscientiously Trespassers in general would deign to consider the Trade and Rights of the Public, when their own Private Interest is in View.

GRANVILLE SHARP.

Old Jewry,
7th May, 1771.

A N

A N I N D E X

T O T H E

Maxims of the Common Law, and
other Authorities quoted in this
Book.

Page

“**C**ONTRA Negantem principia
“ non est disputandum.” (Co. Lit.
343. See also Doct. Stud. Cap. 8.
p. 27.)

13

“ Longum Tempus et longus usus,
“ qui excedit memoriam hominum,
“ sufficit pro jure.” (Principia Legis
et Æquit. p. 55. Co. Lit. 115. Bract.
lib. 4. p. 230. Fleta. lib. 4. cap.
24. p. 264.)

4

G 2

“ Civitas

I N D E X.

	Page
“ Civitas Londini habeat omnes	
“ libertates suas antiquas et confue-	
“ tudines suas.” (Magna Charta,	
cap. 9.)	4, 23
Judge Vaughan’s Reports, 333,	
337, Year-Book 11 Hen. 7.	6, 7, 8
“ Possessio pacifica <i>pour anns</i> 60	
“ facit Jus.” (Principia Leg. & Æ-	
quit. p. 81.) “ A peaceable Posses-	
“ sion for 60 Years makes a Right.”	
(Jenk. Cent. 26.)	9
“ Rescriptum Principis contra Jus	
“ non valet.” (Principia Leg. et Æ-	
quit. p. 97.) See also Bracton (Lib.	
3. cap. ix. p. 107.) for the <i>true</i>	
<i>sense</i> of the Maxim, <i>that the King</i>	
<i>can do no wrong.</i> —“ Nihil enim aliud	
“ potest Rex in terris, cum sit Dei	
“ Minister et Vicarius, <i>nisi id solum</i>	
“ <i>quòd de jure potest.</i> ” &c.	10
Nullum Tempus occurrit Regi.”	11
“ Currit	

I N D E X.

	Page
“ Currit Tempus contra Regem, “ sicut contra quamlibet privatam “ personam.” Bracton de legibus. 2 B. c. 5. p. 14.	11
“ Ex Diuturnitate Temporis om- “ nia præsumuntur solenniter esse “ acta” Judge Jenkins. p. 26.	12
Charter of King Richard I. c. 2. Charter of King Charles II. p. 9. Charter of King John. (Posthumous Works of Sir H. Spelman. p. 63.)	12
“ Iniquum est ingenuis homini- “ bus non esse Liberam rerum sua- “ rum alienationem,” — “ Rerum “ suarum quilibet est moderator et “ arbiter.” — “ Regulariter non va- “ let pactum de re mea non alie- “ nanda.” (Co. Lit. 223.)	13
“ Nemo cogitur rem suam ven- “ dere, etiam justo pretio.” (4 Inst. 275.)	14
“ Quod	

I N D E X.

	Page
“ Quod meum est, a me, sine me, “ auferri non potest.” (Jenk. Cent. 251.)	14
“ Privatum Commodum Publico “ cedit.”—“ Privatum Incommo- “ dum Publico Bono pensatur.” (Jenk. Cent. 223 & 85.)	15
“ Pretextu liciti non debet ad- “ mitti illicitum.” (Principia Leg. & Æquit. p. 82.)	17
“ Lex non favet delicatorum vo- “ tis.” (9 Co. 58.)	17
“ Tort a la Ley est contrary.” (Co. Lit. 158, quoted from Britton.)	19
“ Nemo debet locupletari ex alte- “ rius incommodo.” (Jenk. Cent. 4.)	19
“ Nemo ex dolo suo proprio rele- “ vetur, aut auxilium capiat.” (Jur’. Civ.) Principia Leg. & Æquit. p. 65.)	19
“ Si a jure discedas vagus eris, et “ erunt omnia omnibus incerta.” (Co. Lit. 227.)	20

“ Interest

I N D E X.

	Page
“ Interest Reipublicæ ne malefi-	
“ cia remaneant impunita.” (Jenk.	
Cent. p. 31.)	20, 35
“ Cum indulget Judex indigno,	
“ nonne ad prolapsionis contagium	
“ provocat universos ?” Fleta. lib.	
1. cap. 17. p. 18. Also Bracton	
lib. 3. cap. 9. p. 107. b.	21
“ Uno absurdo dato infinita se-	
“ quuntur.” (1 Co. 102.)	21
“ Videbis ea sæpe committi, quæ	
“ sæpe vindicantur.” (3 Inst. Epil.)	21
“ Quæ rerum natura prohibentur	
“ nulla lege confirmata sunt” (Prin-	
cipia Leg. & Æquit. p. 88.	22
“ Quod contra legem fit, pro in-	
“ fecto habetur.” (4 Co. 31.)	22
Act of Parliament 42 Edw. III.	
cap. 1.	23, 24

I N D E X.

PART II.

Page

“ Quod aliàs bonum & justum “ est, si per vim vel fraudem petatur, “ tur, malum & injustum efficitur.” (3 Co. 78.)	34
“ Spoliatus debet ante omnia re- “ stitui.” (2 Inst. 714.)	34
“ Iniquity bars Equity.” (Prin. Leg. & Æquit. p. 48.)	35
“ Nullus commodum capere po- “ test de injuria sua propria. No “ man shall take advantage of his “ own wrong.” (Co. Lit. p. 148. b.)	35

F I N I S.

Tracts by the same AUTHOR.

Printed for B. WHITE, at HORACE'S-HEAD,
FLEET-STREET.

I. **A** Short Treatise on the English Tongue. Being an Attempt to render the Reading and Pronunciation of the same more easy to Foreigners. 1767.

II. Remarks on several very important Prophecies, first Edition, in 1768, (second Edition, 1775.)

This Book contains, 1st, Remarks on the Prophecy of Isaiah vii. 13-16.—That a *Virgin* should conceive and bear a Son. 2dly, Remarks on the Nature and Style of prophetic Writings. 3dly, Remarks on the Accomplishment of Isaiah's Prophecy, (vii. 8.) "*Within threescore and five Years shall Ephraim be broken, that it be not a People.*" 4thly, On the Departure of the *Sceptre* and *Lavender* from Judah. 5thly, A Confirmation of the above Remarks by farther Examples drawn from the Prophets, &c.

III. A Representation of the Injustice and dangerous Tendency of *Tolerating Slavery*; or of admitting the least Claim of *Private Property in the Persons of Men* IN ENGLAND. Being an Answer to an Opinion, given in the Year 1729, by the (then) Attorney General and Solicitor General, concerning the Case of *Slaves* in GREAT-BRITAIN. 1769.

This Tract contains many Examples of the monstrous *Iniquity* and *Injustice* of the Plantation Laws respecting Slaves; as also some Account of the gradual Abolition of the ancient English *Slavery* called *VILLENAGE*, which was at length happily effected by the Wisdom and Perseverance of the English Courts of Common Law.

IV. Remarks concerning the Encroachments on the River Thames near *Durham-yard*. 1771.

V. An Appendix to the Representation of the Injustice and dangerous Tendency of tolerating Slavery. (See Number III.) 1772.

VI. Remarks on the Opinions of some of the most celebrated Writers on CROWN LAW, respecting the due Distinction between *Manſlaughter* and *Murder*; ſhewing that the Indulgence allowed by the Courts to *voluntary Manſlaughter* in Rencounters, DUELS, &c. is *indiscriminate* and without Foundation in Law; and is alſo one of the principal Cauſes of the Continuance and preſent Increate of the *baſe* and *diſgraceful* Practice of DUELLING. 1773.

The peculiar Caſe of *Gentlemen in the Army*, reſpecting the Practice of DUELLING, is carefully examined in this Tract; as alſo the Depravity and Folly of *modern Men of Honour* falſely ſo called.

VII. In two Parts. 1. A Declaration of the People's *Natural Right* to a Share in the Legiſlature; which is the fundamental Principle of *the Britiſh Conſtitution of State*. 2. A Declaration, or Defence, of the *the ſame Doctrin*e, when applied *particularly to THE PEOPLE OF IRELAND*. 1774. (2d Edition, 1775.)

In theſe two Pieces many Examples and Proofs are produced concerning *the parliamentary Rights of the People*; viz. That the Aſſent of the People is abſolutely neceſſary to render Laws *valid*: That a *free* and *equal* Representation of the Inhabitants of this Kingdom is neceſſary for the *Salvation* of the State, and the Security of *Peace* and of *Property*: That the Representatives of the People have no *legal* Right to give aſſent in any “*new Device without Conference with their Countries*.” That it is an ancient and juſt Right of the People to elect a *new Parliament* “*every Year once, and more often if Need be*,” and that no Regulations whatſoever, wherein the *Representatives* are made *Judges of their own Elections*, can be effectual againſt national Corruption! Examples are likewiſe here given of ſeveral *ſurreptitious STATUTES* that are void through the Want of *due legal Aſſent*; and of Others that are *void* by being
unjuſt

unjust and repugnant to *constitutional Principles*! The Danger of keeping *standing Armies* is also demonstrated, and the Wickedness and Impolicy of Acting by *national Corruption*! &c. &c.

The following Tracts by the same AUTHOR

A R E

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X. " THE LAW OF LIBERTY ;" or (as it is called in Scripture by way of Eminence) " the Royal Law," by which all Mankind will certainly be judged !

XI.

XI. THE LAW OF RETRIBUTION ; or a serious Warning to *Great-Britain* and her *Colonies*, founded on unquestionable Examples of God's temporal Vengeance against Tyrants, Slave-holders, and Oppressors. 1776.

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